IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 31ST MAY 2007 / 10TH JYAISHTA 1929

CRL.A.No. 236 of 2002()

CC.391/1999 of JUDICIAL MAGISTRATE OF FIRST CLASS, KAYAMKULAM

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APPELLANT: COMPLAINANT

P.K.ARAVINDAN,PUTHANPURAKKAL NORTH,
PATHIYOOR,KIZHAKKUMMURI,PATHIYOOR VILLAGE,
KEERIKKAD, KARTHIKAPPALLY TALUK.

BY ADV. SRI.PHILIP MATHEW

RESPONDENTS: ACCUSED & STATE

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1. THULASIDAS NARAYANAPILLAI,
PARAYATTUVILAYIL,KUNNAMANGALAM,CHETTIKULANGARA,
MAVELIKKARA.

2. STATE OF KERALA,REPRESENTED BY THE
PUBLIC PROSECUTOR,HIGH COURT OF KERALA,ERNAKULAM.

BY ADV. SMT.K.V.RESHMI-R1
PUBLIC PROSECUTOR SRI. C.K.SURESH -R2

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 31.5.2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO.236 OF 2002

Dated this the 31st day of May, 2007

JUDGMENT

This appeal is preferred by the complainant in C.C. No.391 of 1999 on the file of the Judicial First Class Magistrate's Court, Kayamkulam. The complaint was filed against the first respondent herein alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. The case of the complainant - appellant was that the accused - first respondent herein borrowed from him an amount of Rs.4,50,000/- in two instalments and issued Exts.P1 and P2 cheques for Rs.2,25,000/- each towards discharge of the said liability. The further case of the complainant was that when Exts.P1 and P2 cheques were presented to the bank for encashment, both the cheques were dishonoured on the ground of insufficiency of funds in the account of the first respondent. On receipt of intimation regarding dishonour of the cheques, the appellant issued statutory notice to the first respondent who refused to accept the same. Accordingly, the complaint was filed. To prove the case against the first respondent, the appellant was examined as PW.1 and Exts.P1 to P6 were

produced. On closing the evidence of the complainant, the accused was questioned under Section 313 Cr.P.C. Denying the allegations in the complaint, the accused stated that he had not borrowed any amount from the appellant as alleged. At the same time, the first respondent had a case that the cheques in question were given to the appellant as security for some amount borrowed by one Chandran from the appellant. To prove the case set up by the first respondent, he relied on Ext.D1 letter alleged to have been issued by the appellant. After considering the entire evidence, the trial court as per judgment dated 31.10.2001 acquitted the accused on the ground that the appellant failed to prove the case against him. The said judgment is challenged in this appeal.

3. This Court heard the learned counsel appearing for the appellant. It is seen that the trial court acquitted the accused on the sole ground set up by the first respondent that the cheques in question were issued by him as security for the amount alleged to have been borrowed by one Chandran. From the evidence now adduced by the appellant, it is not possible to conclude that Ext.D1 relied on by the first respondent can be considered as a piece of evidence to rebut the presumption available to the appellant under Section 139 of the Negotiable Instruments Act. The first respondent had admitted issuance of the cheques in question, but tried to

prove that those cheques were issued as security for the amount borrowed by one Chandran. There was no evidence before the court below to conclude that Ext.D1 would prove that the cheques were issued as suggested by the first respondent during cross-examination of the appellant. The burden is on the first respondent to rebut the presumption available in favour of the appellant under Section 139 of the Negotiable Instruments Act. There is no circumstance or evidence to come to the conclusion that the cheques in question were not issued as alleged in the complaint.

4. In the above circumstances, this Court is of the view that the judgment of the court below requires interference. Accordingly, the impugned judgment is set aside and the matter is remanded to the court below for fresh consideration. It is made clear that the parties shall be allowed to adduce additional evidence, if any.

The Crl. Appeal is allowed by way of remand. The parties shall appear before the court below on 21.7.2007.

(K.THANKAPPAN, JUDGE)

sp/

K.THANKAPPAN, J.

CRL.APPEAL NO.236/2002

JUDGMENT

31ST MAY, 2007